

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RYAN, LLC.,

Plaintiff,

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA, et al.,

Plaintiff-Intervenors,

v.

FEDERAL TRADE COMMISSION,

Defendant.

Case No. 3:24-cv-00986-E

UNOPPOSED MOTION OF PROFESSORS WILLIAM ARAIZA, JEFFREY LUBBERS, AND PETER M. SHANE TO PROCEED WITHOUT LOCAL COUNSEL AND FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANT’S RESPONSE TO PLAINTIFFS’ MOTIONS FOR STAY OF EFFECTIVE DATE AND PRELIMINARY INJUNCTIONS

Professors William Araiza, Jeffrey Lubbers, and Peter M. Shane (“proposed amici”) respectfully seek the Court’s leave to file the accompanying brief as *amici curiae* in support of Defendant Federal Trade Commission’s response to Plaintiff’s and Plaintiff-Intervenors’ motions for stay of effective date and preliminary injunctions. This motion is unopposed.

Proposed *amici* are leading legal academics and experts specializing in the fields of administrative law and statutory interpretation. Proposed *amicus* William

Araiza is the Stanley A. August Professor of Law at Brooklyn Law School.

Proposed *amicus* Jeffrey Lubbers is Professor of Practice in Administrative Law at

American University, Washington College of Law. Proposed *amicus* Peter M.

Shane is the Jacob E. Davis and Jacob E. Davis II Chair in Law Emeritus at Ohio

State University, Moritz College of Law.

NATURE AND STAGE OF THE PROCEEDINGS

Plaintiff and plaintiff-intervenors are challenging the Federal Trade Commission's Non-Compete Clause Rule, 89 Fed. Reg. 38342 (May 7, 2024) ("the Rule"). Currently pending before the Court are Plaintiff's motion to stay the effective date of the Rule and for a preliminary injunction, ECF 23, and Plaintiff-Intervenors' motion for the same relief. ECF 46.

ISSUE TO BE RULED ON BY THE COURT

Proposed *amici* seek leave to submit an *amicus* brief for this Court's consideration in deciding the pending motions. An *amicus brief* "may not be filed without leave of the presiding judge" and that such a brief "must specifically set forth the interest of the amicus curiae in the outcome of the litigation." Local Rule 7.2(b). "The Court has discretion to consider 'amicus' briefing where the 'proffered information is timely and useful or otherwise necessary to the administration of justice.'" *United States ex rel. Long v. GSD & M Idea City LLC*, 2014 WL

11321670, at *4 (N.D. Tex. Aug. 8, 2014) (quoting *Does 1-7 v. Round Rock Indep. Sch. Dist.*, 540 F.Supp.2d 735, 738 n.2 (W.D. Tex. 2007)).

ARGUMENT

The Court should grant this motion because the accompanying brief is timely and will be useful to the Court. Consideration of the brief will not delay consideration or resolution of the pending motions in this matter. Further, the brief is filed just two days after the principal brief it supports. ECF 81; *cf.* Fed. R. App. P. 29 (a)(6) (*amicus* briefs to be filed within 7 days of the principal brief they support).

This brief provides proposed *amici*'s expert analysis and discussion of the major questions doctrine and nondelegation doctrine, particularly as applied to this case. This will assist the Court in evaluating plaintiff's and plaintiff-intervenors' arguments, particularly as they concern the relatively novel major questions doctrine. As experts in the fields of administrative law and statutory interpretation, proposed *amici* have an interest in ensuring that jurisprudence concerning these doctrines is applied consistently and correctly.

RELIEF SOUGHT

Proposed *amici* respectfully request leave to file the accompanying *amicus* brief.

Dated: May 31, 2024

Respectfully submitted,

/s/Mark B. Samburg

Mark B. Samburg

D.C. Bar No. 1018533

(pro hac vice pending)

Robin F. Thurston

D.C. Bar No. 151399

(pro hac vice pending)

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Counsel for proposed Amici Curiae

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with counsel for Plaintiff, Plaintiff-Intervenors, and Defendant, and that all counsel consented to the filing of the accompanying brief.

/s/Mark B. Samburg

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed this document using the ECF System on May 31, 2024, which will send notification to all counsel of record.

/s/Mark B. Samburg